

Reconciling Surrogacy with Islamic Ethics: Maqāṣid al-Sharī'a, Ijtihad, and Contemporary Legal Debates

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Abstract:

This study examines the diverse interpretations of Islamic jurisprudence on surrogacy, focusing on the contrasting approaches between Sunni and Shia scholars. While Sunni scholars predominantly prohibit surrogacy, citing concerns over lineage integrity, marital sanctity, and ethical risks, Shia jurisprudence, particularly in Iran, allows surrogacy under strict regulatory conditions. The study employs a qualitative legal methodology, incorporating Islamic legal texts, fatwas, national legislation, and comparative legal analysis to evaluate how different Islamic traditions approach surrogacy regulation. The findings reveal that Islamic legal thought on surrogacy remains deeply divided. Sunni-majority countries such as Saudi Arabia, Indonesia, and Pakistan uphold stringent bans on surrogacy, emphasizing the need to maintain clear parental lineage. Conversely, Iran's legal framework permits surrogacy, integrating maqāṣid al-sharī'a (higher objectives of Islamic law) to justify its permissibility under ethical guidelines. The study also explores bioethical concerns surrounding the commodification of childbirth and the exploitation of surrogate mothers, emphasizing the necessity of ethical oversight in surrogacy arrangements. The research underscores the importance of developing harmonized legal frameworks that balance Islamic ethical principles with contemporary reproductive needs. Greater interdisciplinary collaboration between Islamic scholars, legal practitioners, and medical experts is crucial for ensuring that surrogacy regulations in Muslim-majority countries are both ethically sound and legally coherent. Future studies should investigate cross-cultural experiences of Muslim couples engaging in surrogacy, regulatory best practices, and the impact of surrogacy laws on family dynamics in Islamic contexts.

Keywords: Islamic law; lineage; reproductive ethics; Sunni and Shia perspectives; surrogacy.

Abstrak:

Penelitian ini mengkaji beragam interpretasi hukum Islam mengenai praktik sewa rahim, dengan fokus pada perbedaan pendekatan antara ulama Sunni dan Syiah. Sementara ulama Sunni secara umum melarang sewa rahim dengan alasan menjaga kejelasan garis keturunan (*nasab*), kesucian pernikahan, serta risiko etis yang ditimbulkannya, yurisprudensi Syiah, terutama di Iran, mengizinkan praktik ini di bawah regulasi yang ketat. Studi ini menggunakan metode penelitian hukum kualitatif, dengan menganalisis teks-teks hukum Islam, fatwa, perundang-undangan nasional, serta pendekatan perbandingan hukum untuk mengevaluasi bagaimana berbagai tradisi Islam mengatur praktik sewa rahim. Hasil kajian menunjukkan bahwa pandangan hukum Islam mengenai sewa rahim sangat beragam. Negara-negara dengan mayoritas Sunni, seperti Arab Saudi, Indonesia, dan Pakistan, melarang praktik ini karena kekhawatiran terhadap kejelasan *nasab* dan kesucian pernikahan. Sebaliknya, Iran sebagai negara mayoritas Syiah memperbolehkan sewa rahim dengan kerangka hukum yang ketat, mengacu pada *maqāsid al-sharī‘a* untuk menjaga etika dan tujuan hukum Islam. Kajian ini juga menyoroti isu bioetika seperti komodifikasi kelahiran dan potensi eksploitasi ibu pengganti, serta pentingnya pengawasan etis. Ditekankan pula perlunya kerangka hukum yang seimbang antara etika Islam dan kebutuhan reproduksi modern melalui kolaborasi antara ulama, praktisi hukum, dan tenaga medis. Kajian lanjutan direkomendasikan untuk mengeksplorasi pengalaman lintas budaya dan dampak hukum sewa rahim terhadap dinamika keluarga Muslim.

Kata kunci: Hukum Islam; *nasab*; etika reproduksi; perspektif Sunni dan Syiah; sewa rahim.



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Introduction

The ethical and legal debates surrounding surrogacy in Islamic jurisprudence are complex and multifaceted, primarily stemming from the foundational principles of Islamic law (*Sharia*) and the socio-cultural contexts in which these laws are interpreted. Assisted Reproductive Technologies (*ART*), including in vitro fertilization (*IVF*) and surrogacy, have advanced significantly in recent decades, raising new questions about their compatibility with Islamic ethical and legal norms. One of the most pressing concerns within Islamic discussions on surrogacy is the preservation of lineage (*nasab*), which is a cornerstone of Islamic family law. Scholars argue that surrogacy disrupts *the* lineage purity by introducing a third party into the reproductive process, making it incompatible with Islamic values that prioritize family integrity and the sanctity of

marriage.¹ Furthermore, parental identity and inheritance rights are significant concerns, as traditional Islamic law stipulates clear lineage and inheritance structures that are disrupted by surrogacy.²

Islamic legal perspectives on surrogacy largely lean towards prohibition, particularly in Sunni jurisprudence, where a strong consensus exists against the practice. This consensus is reinforced by various fatwas (*legal opinions*) issued by leading Islamic scholars and institutions, emphasizing the importance of maintaining lineage purity, protecting the rights of the child, and avoiding the commodification of women's reproductive capacities.³ Ethical concerns extend beyond the disruption of lineage, as many scholars argue that surrogacy can lead to the exploitation of economically disadvantaged women, especially in commercial surrogacy arrangements. This risk is heightened in societies where poverty may force women to become surrogates out of financial necessity, raising serious concerns about coercion, autonomy, and reproductive rights.⁴

The main research problem addressed in this study is the divergence in Islamic rulings on surrogacy across different legal traditions. This study specifically focuses on the Sunni and Shia perspectives because they represent the two major schools of thought within Islam, each with distinct methodologies of legal interpretation (*istinbāt*) and jurisprudential frameworks. Sunni jurisprudence generally adheres to a more textualist and conservative approach, resulting in the predominant prohibition of surrogacy. In contrast, Shia jurisprudence, particularly in Iran, demonstrates greater flexibility through the application of *ijtihād* and the integration of *maqāṣid al-sharī'a*, which under certain conditions allows surrogacy. By comparing these two traditions, the study captures the internal diversity of Islamic legal thought and highlights how differing interpretive approaches impact contemporary bioethical and legal debates. This contrast also explains the inconsistencies in surrogacy regulations among Muslim-majority countries, where some states enforce strict prohibitions, while others implement regulated surrogacy frameworks.

¹ Ayesha Alvi, "Retracing Islamic Prohibition on Genetic Gestational Surrogacy (Uterine Service) for Married Couples," *Australian Journal of Islamic Studies* 8, no. 1 (2023), <https://doi.org/10.55831/ajis.v8i1.553>; Saima Shafi, "Islamic Insights on Assisted Reproductive Technology: Navigating Sunni and Shi'a Perspectives," *RESEARCH REVIEW International Journal of Multidisciplinary* 9, no. 1 (2024), <https://doi.org/10.31305/rrijm.2024.v09.n01.002>; Gamal Serour et al., "Sunni Islamic Perspectives on Lab-Grown Sperm and Eggs Derived from Stem Cells—in Vitro Gametogenesis (IVG)," *New Bioethics* 29, no. 2 (2023), <https://doi.org/10.1080/20502877.2022.2142094>; Ya'arit Bokek-Cohen and Mahdi Tarabeih, "What Do Sunni Muslims Think about Religiously Forbidden Reproductive Options?," *Human Fertility* 25, no. 4 (2022), <https://doi.org/10.1080/14647273.2021.1921289>.

² Ya'arit Bokek-Cohen, Limor Dina Gonen, and Mahdi Tarabeih, "The Ethical Standards of Sunni Muslim Physicians Regarding Fertility Technologies that Are Religiously Forbidden," *Journal of Religion and Health* 61, no. 4 (2022), <https://doi.org/10.1007/s10943-022-01583-9>.

³ Bokek-Cohen and Tarabeih, "What Do Sunni Muslims Think about Religiously Forbidden Reproductive Options?"; Shafi, "Islamic Insights on Assisted Reproductive Technology: Navigating Sunni and Shi'a Perspectives."

⁴ Serour et al., "Sunni Islamic Perspectives on Lab-Grown Sperm and Eggs Derived from Stem Cells—in Vitro Gametogenesis (IVG)."

The general solutions proposed by Islamic scholars regarding surrogacy revolve around strict marital boundaries in *ART*, ensuring that any reproductive assistance remains within the biological framework of a married couple. Sunni scholars emphasize that *ART* should be limited to the husband and wife, prohibiting any third-party involvement.⁵ This position stems from the belief that surrogacy violates the sanctity of marriage, leading to ethical concerns regarding parenthood, *nasab*, and the rights of the child.⁶

In contrast, Shia scholars exhibit a more flexible approach, allowing for certain *ART* procedures under specific conditions. For example, surrogacy is permitted in Iran under temporary marriage contracts (*mut'ah*) to ensure lineage integrity.⁷ This *ijtihad*-based (independent reasoning) approach enables a more adaptable legal framework, distinguishing Shia jurisprudence from the stricter Sunni stance. While most Shia scholars still oppose surrogacy, a minority supports it within regulated parameters, reflecting broader jurisprudential flexibility.⁸

Several studies have explored alternative legal interpretations that balance religious principles with technological advancements. Some scholars argue that *maqāsid al-sharī'a* (higher objectives of Islamic law), particularly the preservation of lineage (*hifz al-nasl*) and family welfare, could support limited surrogacy within strictly controlled frameworks.⁹ This perspective suggests that surrogacy, if regulated properly, could fulfill the Islamic objective of enabling infertile couples to have children while maintaining ethical safeguards. However, the challenge remains in establishing a consensus that upholds both Islamic legal traditions and contemporary medical realities.

The literature surrounding surrogacy in Islamic jurisprudence highlights the legal inconsistencies across Muslim-majority countries. Countries such as Saudi Arabia and Indonesia explicitly prohibit surrogacy, aligning with the majority Sunni view that considers it incompatible with Islamic law.¹⁰ Meanwhile, Iran permits certain forms of

⁵ Mansooreh Saniei and Mehdi Kargar, "Modern Assisted Reproductive Technologies and Bioethics in the Islamic Context," *Theology and Science* 19, no. 2 (2021): 146–54, <https://doi.org/10.1080/14746700.2021.1910914>.

⁶ Saniei and Kargar, "Modern Assisted Reproductive Technologies and Bioethics in the Islamic Context"; Ahdiana Yuni Lestari et al., "Young Muslims' Responses to Conception through in-Vitro Fertilization," *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2076323>.

⁷ Saniei and Kargar, "Modern Assisted Reproductive Technologies and Bioethics in the Islamic Context"; Ayman Shabana, "Islamic Perspectives on Gamete Donation and Surrogacy," 2024, 337–52, <https://doi.org/10.1093/oxfordhb/9780190633202.013.19>.

⁸ Saniei and Kargar, "Modern Assisted Reproductive Technologies and Bioethics in the Islamic Context"; Harrison, "Who Is Your Mother? Who Is Your Father?: Assisted Reproductive Technologies in the Light of Sunni and Shi'a Law."

⁹ Amalia and Sudistina, "Examining Ushul Fiqh Principles on the Surrogacy-Based In Vitro Fertilization Program."

¹⁰ Shafi, "Islamic Insights on Assisted Reproductive Technology: Navigating Sunni and Shi'a Perspectives"; Serour et al., "Sunni Islamic Perspectives on Lab-Grown Sperm and Eggs Derived from Stem Cells—in Vitro Gametogenesis (IVG)"; Mohsin Raza et al., "Legal Status Of Surrogacy In Islam (A Critical Analysis In View Of Jurisprudence Ruling)," *Webology*, vol. 19, 2022, <http://www.webology.org><http://www.webology.org>.

surrogacy under Shia legal frameworks, reflecting jurisprudential flexibility.¹¹ This legal fragmentation underscores the need for a more coherent regulatory framework that aligns with both Islamic ethics and contemporary reproductive challenges.

The objective of this study is to systematically examine the different *istinbāt* approaches utilized in Islamic legal reasoning regarding surrogacy. By identifying textualist, contextualist, and *maqasid*-based methodologies, this research seeks to clarify the foundations of Islamic legal thought on surrogacy. This study also contributes to the broader Islamic bioethical discourse, offering an analytical framework to explain the jurisprudential variations in surrogacy rulings. Additionally, this research highlights the contemporary relevance of classical jurisprudence in addressing modern reproductive dilemmas, demonstrating the adaptability and limitations of Islamic legal thought in the face of medical advancements.

This research is significant for both Islamic scholars and legal policymakers. Given the growing accessibility of *ART* and surrogacy worldwide, it is essential to establish a clear ethical and legal position that aligns with Islamic principles while considering medical and social realities. By exploring the diversity of Islamic rulings, this study provides a critical foundation for future discourse on reproductive ethics, bioethics, and Islamic legal reform. The findings of this study are expected to inform academic scholars, policymakers, and religious authorities in developing ethical and legally coherent guidelines for surrogacy in Muslim-majority countries.

Method

This study employs a qualitative legal research methodology, utilizing a library-based approach that emphasizes the analysis of both primary and secondary sources. The primary sources include foundational Islamic legal texts such as the Qur'an, Hadith, and classical jurisprudential works from major Sunni and Shia schools (e.g., Hanafī, Maliki, Shafī'i, Hanbali, and Ja'fari), as well as contemporary fatwas issued by authoritative Islamic institutions. Secondary sources consist of peer-reviewed academic publications, legal commentaries, bioethical literature, and national legislation from selected Muslim-majority countries. Given the complexity of legal reasoning (*istinbāt*) in Islamic law, the study critically analyzes various interpretative methodologies employed by Islamic scholars in addressing surrogacy. The research is structured around an analytical-comparative framework, aligning with key principles of Islamic jurisprudence such as *qiyās* (analogical reasoning), *ijmā'* (scholarly consensus), *istihsān* (juridical preference), and *maqāṣid al-sharī'a* (the higher objectives of Islamic law). Additionally, a comparative legal analysis is conducted to examine how Islamic legal perspectives on

¹¹ Md Shaikh Farid, "Ethical Issues in Sperm, Egg and Embryo Donation: Islamic Shia Perspectives," *HEC Forum* 36, no. 2 (2024), <https://doi.org/10.1007/s10730-022-09498-4>; Valeriy Suvorov and Elmira Fakhruddinova, "Surrogacy in Muslim Communities of the Middle East and Russia: Trends and Perspectives," *Gosudarstvo, Religii, Tserkov' v Rossii i Za Rubezhom/State, Religion and Church in Russia and Worldwide* 40, no. 4 (2022), <https://doi.org/10.22394/2073-7203-2022-40-4-242-254>; Saeid Nazari Tavakkoli, "The Status of 'Mother' in Gestational Surrogacy: The Shi'i Jurisprudential Perspective," *Asian Bioethics Review* 14, no. 4 (2022), <https://doi.org/10.1007/s41649-022-00217-2>.

surrogacy differ from or align with Western legal and bioethical frameworks, providing a broader contextual understanding of the issue.

Primary sources for this study include foundational Islamic legal texts, such as the Quran and *Hadith*, which provide guidance on lineage (*nasab*), marriage, and ethical considerations in reproductive matters. Classical *fiqh* texts from major Sunni and Shia schools of thought (*Hanafi, Maliki, Shafi'i, Hanbali, and Ja'fari*) are examined to understand historical rulings on reproductive technologies. Additionally, contemporary *fatwas* from institutions such as *Al-Azhar, the International Islamic Fiqh Academy*, and Iranian religious authorities are analyzed to explore modern applications of Islamic law to surrogacy. Secondary sources consist of academic journals and books on Islamic bioethics, reproductive law, and legal theory that contextualize surrogacy within broader ethical debates.¹² Legal documents and national legislation from Muslim-majority countries, including Iran, Saudi Arabia, Malaysia, and Indonesia, are reviewed to compare regulatory approaches. International policy reports from bodies such as the World Health Organization (*WHO*) and the United Nations (*UN*) provide insights into global bioethical and legal frameworks regarding surrogacy.

This study employs a three-tiered analytical framework to systematically examine the legal and ethical discourse on surrogacy in Islamic law. The first component is the examination of Islamic legal reasoning (*istinbāt*) methodologies. *Qiyas*, or analogical reasoning, is used by scholars to draw comparisons between surrogacy and other reproductive practices to determine its permissibility in Islamic law.¹³ *Ijma*, or scholarly consensus, has played a crucial role in Sunni jurisprudence, where a majority of scholars prohibit surrogacy, while Shia scholars exhibit greater flexibility in specific contexts.¹⁴ *Istihsan*, or juridical preference, allows for prioritizing justice and public interest, leading some scholars to argue for limited surrogacy within strictly regulated conditions. *Maqāṣid al-sharī'a*, which evaluates whether surrogacy aligns with the preservation of lineage, life, and family welfare, is also explored.

The second component of the analytical framework involves comparative legal analysis, which examines the diversity of surrogacy regulations across different Islamic and non-Islamic jurisdictions. This study assesses prohibitive models in countries such as Saudi Arabia and Indonesia, regulated models in Iran and Lebanon, and ambiguous models in Malaysia and Turkey. It also contrasts contract-based surrogacy models in the

¹² Dr. Mohammad Numan Hassan, "Surrogacy: Between Islam and European Secularism A Comparative Study," *AL-HIDAYAH* 5, no. 2 (2023), <https://doi.org/10.52700/alhidayah.v5i2.72>; Zachariah Matthews, "A Review of the Rulings by Muslim Jurists on Assisted Reproductive Technology and Reproductive Tissue Transplantation," *Religions*, 2021, <https://doi.org/10.3390/rel12090720>.

¹³ Muhammad Nouman Riaz et al., "Why Is Commercial Surrogacy Banned Worldwide? A Complete Review," *International Journal for Research in Applied Science and Engineering Technology* 11, no. 10 (2023), <https://doi.org/10.22214/ijraset.2023.56045>; Md Shaikh Farid and Sumaia Tasnim, "Assisted Reproductive Technologies: Comparing Abrahamic Monotheistic Religions," *Asian Bioethics Review* 15, no. 1 (2023), <https://doi.org/10.1007/s41649-022-00224-3>.

¹⁴ Bokek-Cohen and Tarabeih, "What Do Sunni Muslims Think about Religiously Forbidden Reproductive Options?"; Bokek-Cohen, Gonen, and Tarabeih, "The Ethical Standards of Sunni Muslim Physicians Regarding Fertility Technologies That Are Religiously Forbidden."

United States and the UK with Islamic ethical considerations. Additionally, international case studies are analyzed to understand how socio-political and cultural contexts shape surrogacy laws in different regions.

The third component addresses ethical and social considerations. This includes evaluating the commodification of women's bodies, risks of exploitation in commercial surrogacy, and implications for lineage and inheritance laws. The impact of surrogacy on family structures is analyzed, particularly concerning Islamic family integrity in both Sunni and Shia contexts.¹⁵ Furthermore, the study investigates whether Islamic ethical frameworks can integrate elements of Western legal protections in surrogacy practices.

While this study provides a comprehensive analysis of *istinbāt* methodologies in Islamic surrogacy rulings, several limitations must be acknowledged. Jurisprudential diversity within Sunni and Shia interpretations presents challenges in establishing a universally accepted ruling on surrogacy.¹⁶ Additionally, the lack of uniform legislation across Muslim-majority countries creates inconsistencies in regulatory frameworks, making direct comparisons complex.¹⁷ Moreover, the rapid advancements in Assisted Reproductive Technologies (ART) may outpace Islamic legal discourse, necessitating continuous scholarly engagement to ensure that Islamic jurisprudence remains responsive to contemporary medical and ethical challenges.¹⁸

Discussion

Variations in *Istinbāt* Approaches Toward Surrogacy

The debate surrounding surrogacy in Islamic jurisprudence reveals diverse methodologies of legal reasoning (*istinbāt*), leading to significant differences in rulings among scholars. While classical Islamic texts do not explicitly address surrogacy, scholars derive legal principles from the Quran and *Hadith* to determine its permissibility. The interpretations of Islamic law concerning surrogacy primarily fall into three categories: textualist, contextualist, and *maqasid*-based approaches. Each approach offers a distinct legal reasoning framework that reflects varying levels of adherence to traditional legal norms and flexibility toward modern reproductive technologies.

The textualist approach, predominant in Sunni jurisprudence, relies strictly on literal interpretations of the Quran and *Hadith* to prohibit surrogacy. Scholars adhering to

¹⁵ Alvi, "Retracing Islamic Prohibition on Genetic Gestational Surrogacy (Uterine Service) for Married Couples"; Nurul Mujahidah et al., "THE LEGALITY OF SURROGATE MOTHERS FROM THE ISLAMIC LAW PERSPECTIVE," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*, 2022, <https://doi.org/10.24252/al-risalah.vi.27944>.

¹⁶ Muh. Sudirman et al., "Children Resulting from Insemination Through the Surrogate Mother Process (Substitute Mother) and Their Instruction Rights Islamic Law Perspective," *SHS Web of Conferences* 149 (2022), <https://doi.org/10.1051/shsconf/202214902008>; Nazari Tavakkoli, "The Status of 'Mother' in Gestational Surrogacy: The Shi'i Jurisprudential Perspective."

¹⁷ A Rahmani et al., "Gestational Surrogacy: Viewpoint of Iranian Infertile Women," n.d.; Fatemeh Ghodrati, "A Comparative Study of Surrogacy Rights in Iran and European Countries, a Review Article," *Ethics Medicine and Public Health* 27 (2023): 100880, <https://doi.org/10.1016/j.jemep.2023.100880>.

¹⁸ Harrison, "Who Is Your Mother? Who Is Your Father?: Assisted Reproductive Technologies in the Light of Sunni and Shi'a Law"; Saniei and Kargar, "Modern Assisted Reproductive Technologies and Bioethics in the Islamic Context."

this methodology argue that surrogacy violates fundamental principles of lineage (*nasab*), marital sanctity, and the exclusion of third parties in reproduction.¹⁹

One of the strongest textualist arguments is the preservation of lineage, as lineage plays a crucial role in Islamic inheritance laws and social identity. The Quran explicitly states, "*Call them by the names of their fathers; it is more just in the sight of Allah*" (Quran 33:5), reinforcing the importance of biological lineage. Scholars contend that surrogacy introduces ambiguity in parentage, as the surrogate mother, genetic mother, and intended mother may have conflicting claims over the child's lineage.²⁰ Another major concern is the exclusion of third parties in procreation, which is emphasized in *Hadith* literature. The Prophet Muhammad stated, "*The child belongs to the bed (of the husband)*" (*Sahih Bukhari*), reinforcing that the legal parents of a child must be confined within a valid marital relationship. Sunni scholars argue that surrogacy disrupts this exclusive parental bond by involving a third-party woman in the reproductive process, rendering it impermissible.²¹

Additionally, textualist scholars highlight the rights of the child as a key reason for prohibiting surrogacy. The Islamic legal framework prioritizes the child's right to a clear lineage and inheritance, both of which may become ambiguous in surrogacy arrangements. Furthermore, concerns about commercial exploitation arise, as economically disadvantaged women may be coerced into surrogacy, violating Islamic ethical principles that prohibit the commodification of the human body. Given these concerns, Sunni-majority countries such as Saudi Arabia, Indonesia, and Pakistan strictly prohibit surrogacy, aligning with the textualist stance that upholds lineage purity and marital exclusivity in reproduction. In contrast to the textualist approach, the contextualist approach applies a situational understanding of Islamic jurisprudence, allowing for limited acceptance of surrogacy under strict conditions. Scholars within this framework emphasize the application of *ijtihād* (*independent reasoning*) to adapt Islamic rulings to contemporary realities.²²

Contextualist scholars argue that *maqāṣid al-sharī'a* (*higher objectives of Islamic law*) justify the permissibility of surrogacy in cases where it serves a legitimate purpose, such as preserving family integrity and addressing infertility. The primary rationale behind this perspective is the preservation of lineage and procreation, which are fundamental objectives of Islamic law. If surrogacy enables an infertile couple to have

¹⁹ Serour et al., "Sunni Islamic Perspectives on Lab-Grown Sperm and Eggs Derived from Stem Cells—in Vitro Gametogenesis (IVG)"; Bokek-Cohen and Tarabeih, "What Do Sunni Muslims Think about Religiously Forbidden Reproductive Options?"; Bokek-Cohen, Gonen, and Tarabeih, "The Ethical Standards of Sunni Muslim Physicians Regarding Fertility Technologies That Are Religiously Forbidden."

²⁰ Serour et al., "Sunni Islamic Perspectives on Lab-Grown Sperm and Eggs Derived from Stem Cells—in Vitro Gametogenesis (IVG)."

²¹ Bokek-Cohen, Gonen, and Tarabeih, "The Ethical Standards of Sunni Muslim Physicians Regarding Fertility Technologies That Are Religiously Forbidden."

²² Saniei and Kargar, "Modern Assisted Reproductive Technologies and Bioethics in the Islamic Context"; Shabana, "Islamic Perspectives on Gamete Donation and Surrogacy."

biological offspring while maintaining ethical safeguards, it may be considered a permissible medical necessity.

The role of intention (*niyyah*) also plays a significant part in contextualist arguments. Scholars within this framework argue that if surrogacy is undertaken with pure intentions, such as ensuring the well-being of the family and adhering to Islamic ethical guidelines, it may be permissible in specific contexts. However, clear legal and ethical regulations must be established to prevent abuse and exploitation.²³ Examples of countries with legal ambiguity on surrogacy, such as Malaysia²⁴ and Turkey, reflect a contextualist stance that allows for case-by-case *fatwa* rulings while avoiding outright legalization. The *maqasid*-based approach represents a more flexible and ethical interpretation of Islamic law, advocating for a case-by-case assessment of surrogacy based on public interest (*maslahah*) and individual welfare. Scholars who adopt this methodology argue that Islamic law should evolve in response to medical advancements, provided that fundamental Islamic ethical principles remain intact.

The key argument supporting surrogacy under *maqasid*-based reasoning is that it aligns with the preservation of progeny (*ḥifẓ al-nasl*) and ensures family stability. If surrogacy can be conducted ethically—ensuring that the rights of the child, surrogate mother, and intended parents are protected—it can be considered permissible under Islamic law.

Scholars advocating for this perspective also emphasize the necessity of legal and ethical safeguards to prevent exploitation. Some propose state-regulated surrogacy programs with strict criteria to ensure compliance with Islamic ethical norms. This position is evident in Shia-majority countries like Iran and Lebanon, where surrogacy is legally regulated within religious guidelines, particularly through temporary marriage contracts (*mut'ah*) that secure the legitimacy of the child.²⁵

Despite these arguments, concerns remain regarding the potential for misuse and exploitation. Ethical scholars warn that without proper regulations, surrogacy may lead to the commodification of reproduction, undermining its justification under *maqāṣid al-sharī'a*.

Table 1. Variations in Istinbāt Approaches Toward Surrogacy

²³ Bokek-Cohen and Tarabeih, "What Do Sunni Muslims Think about Religiously Forbidden Reproductive Options?"

²⁴ Diana Katiman et al., "Exploring End-of-Life Issues and Determination of the Surrogacy Ladder in Malaysia," *Environment-Behaviour Proceedings Journal* 7, no. 22 (2022), <https://doi.org/10.21834/ebpj.v7i22.4150>; Eriko Shiraishi et al., "The Scenario of Adoption and Foster Care in Relation to the Reproductive Medicine Practice in Asia," *International Journal of Environmental Research and Public Health* 18, no. 7 (2021), <https://doi.org/10.3390/ijerph18073466>; Tendayi Bloom and Lindsey Kingston, "Introduction: Opening a Conversation about Statelessness, Governance and the Problem of Citizenship," in *Statelessness, Governance and the Problem of Citizenship*, 2021.

²⁵ Harrison, "Who Is Your Mother? Who Is Your Father?: Assisted Reproductive Technologies in the Light of Sunni and Shi'a Law"; Saniei and Kargar, "Modern Assisted Reproductive Technologies and Bioethics in the Islamic Context."

Approach	Legal Reasoning	Key Arguments	Jurisdictions/Examples	Potential Concerns
Textualist Approach	Strict adherence to Quran and Hadith	Surrogacy disrupts lineage (<i>nasab</i>), violates marital sanctity, and introduces third-party reproduction, which is impermissible in Islam	Predominantly followed in Saudi Arabia, Indonesia, Pakistan; <i>fatwas</i> strictly prohibit surrogacy	Lack of flexibility for medical advancements; may restrict reproductive options for infertile couples
Contextualist Approach	Case-based application using <i>ijtihad</i> (<i>independent reasoning</i>)	Surrogacy may be permissible under strict ethical guidelines if it serves a legitimate purpose like preserving lineage and addressing infertility	Found in Malaysia, Turkey, where rulings on surrogacy are issued on a case-by-case basis, avoiding outright legalization	Legal ambiguity; risk of inconsistent rulings and potential exploitation if not regulated effectively
Maqāṣid-Based Approach	Application of maqāṣid al-sharīʿa (<i>higher objectives of Islamic law</i>)	Surrogacy aligns with the preservation of progeny (<i>ḥifẓ al-nasl</i>) and family stability if conducted ethically under legal safeguards	Practiced in Iran, Lebanon, where surrogacy is legally regulated under religious guidelines, including through temporary marriage (<i>mutʿah</i>)	Risk of misuse, commodification of reproduction, and ethical concerns about potential exploitation of surrogate mothers

The variations in *istinbāt* approaches toward surrogacy reflect different levels of adherence to classical Islamic principles and responsiveness to contemporary medical advancements. Sunni-majority countries generally follow the textualist approach,

emphasizing strict interpretations, whereas Shia-majority countries like Iran adopt a maqāsid-based framework, allowing surrogacy under strict ethical supervision. Countries with legal ambiguity, such as Malaysia and Turkey, apply contextualist principles, leading to flexible but inconsistent legal decisions.

Moving forward, Islamic scholars and policymakers should work toward harmonizing legal frameworks to ensure consistent ethical guidelines while accommodating modern reproductive technologies. A unified legal framework, incorporating elements of ethical oversight, informed consent, and protection against exploitation, could provide a balanced approach to surrogacy within the context of Islamic law and bioethics.

Legal and Ethical Challenges in Surrogacy within Islamic Law

Islamic law defines *nasab* (lineage) as a fundamental legal and social connection that determines familial relationships, inheritance rights, and identity. In Islamic jurisprudence, lineage plays a pivotal role in shaping the legal status of children born through surrogacy. The Quran emphasizes the importance of lineage, stating, "*Call them by the names of their fathers; it is more just in the sight of Allah*" (Quran 33:5), reinforcing the principle that children must be linked to their biological parents. This principle is central to objections against surrogacy, as it introduces a third party into the reproductive process, potentially obscuring a child's lineage and disrupting traditional Islamic kinship structures.²⁶

In Sunni Islamic jurisprudence, children born via surrogacy often face legal ambiguities regarding their lineage. The surrogate mother is not recognized as the child's legal mother, and in many cases, the intended mother is also not granted legal maternity. This lack of recognition affects the child's inheritance rights and familial ties. Scholars argue that Islamic law strictly mandates that parental lineage must be clear and traceable, and the introduction of a surrogate disrupts this principle.

Shia jurisprudence, on the other hand, provides a more flexible approach to surrogacy, allowing it under specific legal frameworks. In Iran, surrogacy is permitted under temporary marriage (*mut'ah*) contracts, which ensure that the child is legally recognized as part of the intended parents' lineage.²⁷ While this framework provides a legal pathway for recognizing surrogacy, it remains controversial among Sunni scholars, who argue that it undermines the Islamic prohibition on third-party reproductive involvement.

In summary, lineage issues in Islamic law significantly impact the legal recognition of children born through surrogacy. Sunni scholars largely reject the practice due to its potential to disrupt *nasab*, while Shia scholars have developed conditional frameworks that align surrogacy with Islamic legal principles.

²⁶ Alvi, "Retracing Islamic Prohibition on Genetic Gestational Surrogacy (Uterine Service) for Married Couples."

²⁷ Rahmani et al., "Gestational Surrogacy: Viewpoint of Iranian Infertile Women"; Farid, "Ethical Issues in Sperm, Egg and Embryo Donation: Islamic Shia Perspectives."

The commodification of childbirth is a major concern within Islamic bioethics, particularly in commercial surrogacy arrangements. Scholars argue that commercial surrogacy treats women as reproductive commodities, reducing them to mere vessels for childbirth. This commodification is seen as contradictory to Islamic values that prioritize human dignity and the protection of women's rights. A significant ethical concern is the potential exploitation of economically disadvantaged women, who may be coerced into surrogacy due to financial necessity. This concern aligns with broader critiques of global surrogacy markets, where women from low-income backgrounds are disproportionately targeted for surrogacy agreements.²⁸

From an Islamic ethical perspective, commodification not only impacts the surrogate mother but also affects the identity and rights of the child. Islam prioritizes the child's right to know their biological parents and to inherit from them. However, surrogacy complicates these rights, particularly when the surrogate and the intended mother hold conflicting claims over legal maternity. Furthermore, scholars warn that normalizing surrogacy could lead to broader moral dilemmas, including the commercialization of human reproduction beyond surrogacy itself. This shift could undermine the sanctity of family and procreation as upheld in Islamic teachings. Thus, Islamic scholars caution that surrogacy must be carefully regulated to prevent its commodification and ensure that women's reproductive rights and dignity are upheld.

Surrogacy contracts are generally unenforceable in most Islamic jurisdictions due to prevailing interpretations of Islamic legal principles on lineage and marriage. In many Muslim-majority countries, surrogacy is explicitly banned, and any contractual agreements related to it are deemed void under Islamic law. For instance, in Saudi Arabia and the United Arab Emirates, surrogacy contracts are not legally recognized, aligning with the dominant Sunni view that any reproductive process involving a third party is impermissible. In contrast, Iran has a structured legal framework for surrogacy, allowing contracts under specific conditions that adhere to Shia jurisprudence.²⁹ However, these contracts remain subject to scrutiny regarding their ethical implications and the rights of all parties involved.

Legal scholars highlight the lack of standardized regulatory mechanisms for surrogacy contracts in Islamic contexts. While some argue for a reformulation of contract law to accommodate surrogacy within Islamic ethical constraints, others maintain that the risks of exploitation and lineage confusion outweigh any potential benefits. Ultimately, the absence of enforceable surrogacy contracts in most Islamic jurisdictions limits its legal viability, reinforcing the stance that surrogacy remains largely incompatible with Islamic legal traditions. Islamic legal scholars emphasize the importance of ethical

²⁸ Valeria Piersanti et al., "Surrogacy and 'Procreative Tourism'. What Does the Future Hold From the Ethical and Legal Perspectives?," *Medicina* 57, no. 1 (2021): 47, <https://doi.org/10.3390/medicina57010047>; Paola Frati et al., "Bioethical Issues and Legal Frameworks of Surrogacy: A Global Perspective About the Right to Health and Dignity," *European Journal of Obstetrics & Gynecology and Reproductive Biology* 258 (2021): 1–8, <https://doi.org/10.1016/j.ejogrb.2020.12.020>.

²⁹ Nazari Tavakkoli, "The Status of 'Mother' in Gestational Surrogacy: The Shi'i Jurisprudential Perspective."

safeguards to prevent the exploitation of surrogate mothers. Given the concerns over commercial surrogacy, scholars advocate for strict ethical guidelines and regulations that protect surrogate mothers from coercion and financial manipulation.³⁰

A key ethical principle in Islamic law is informed consent, which mandates that surrogates must fully understand the implications of their role before engaging in any agreement. Additionally, scholars call for protections against financial coercion, ensuring that surrogate mothers are not pressured into agreements due to economic hardship. The application of *maqāsid al-sharīʿa* (*higher objectives of Islamic law*) is critical in addressing these ethical concerns. Scholars argue that any form of surrogacy must align with the principles of justice, compassion, and human dignity. This approach suggests that while surrogacy may be considered under specific conditions, it must be approached with extreme caution and a robust ethical framework.

Comparative Legal Analysis of Surrogacy in Muslim-Majority Countries

The regulation of surrogacy varies significantly across Muslim-majority countries, with some jurisdictions strictly prohibiting the practice based on Islamic legal principles, while others have developed structured legal frameworks to accommodate surrogacy under specific conditions. This section explores how different Muslim-majority countries approach surrogacy, analyzing their legal arguments, religious justifications, and ethical concerns surrounding the practice.

In Saudi Arabia, Indonesia, and Pakistan,³¹ the legal prohibition of surrogacy is rooted in religious, ethical, and social considerations. The primary arguments against surrogacy in these countries emphasize the preservation of lineage (*nasab*), the prohibition of third-party involvement in procreation, and the risk of exploitation of surrogate mothers. Islamic law places great importance on maintaining clear familial relationships, and surrogacy disrupts this by introducing ambiguity regarding the child's lineage. In Saudi Arabia, legal frameworks heavily influenced by Sharia law prioritize the rights of biological parents, rejecting any reproductive practice that alters the traditional understanding of *nasab*. Similarly, in Pakistan and Indonesia, scholars argue that surrogacy undermines the Islamic principle that children should be recognized by their biological parents.

Islamic jurisprudence generally prohibits the involvement of third parties in procreation. In countries like Saudi Arabia and Pakistan, *fatwas* issued by leading Islamic scholars reinforce the view that surrogacy is analogous to adultery (*zina*), as it involves a woman carrying a child that is not biologically hers. Another significant issue is the

³⁰ Harrison, "Who Is Your Mother? Who Is Your Father?: Assisted Reproductive Technologies in the Light of Sunni and Shi'a Law"

³¹ Bayu Sujadmiko et al., "Surrogacy in Indonesia: The Comparative Legality and Islamic Perspective," *HTS Theologiese Studies / Theological Studies* 79, no. 1 (2023), <https://doi.org/10.4102/HTS.V79I1.8108>; Muh Endriyo Susila and Kirthie Rubini Morgan, "COMPARATIVE LEGAL ANALYSIS OF SURROGACY BETWEEN INDONESIA AND INDIA," *Jurnal Bina Mulia Hukum* 7, no. 1 (2022), <https://doi.org/10.23920/jbmh.v7i1.1016>; Memona Maqsood, Dr. Farhana Mehmood, and Dr. Hafsa Abbasi, "Shariah Perspective on Surrogacy: Legislation in Pakistan Regarding Protection of Woman's Right," *Acta-Islamica* 10, no. 02 (2022).

potential exploitation of surrogate mothers, which remains a concern in these jurisdictions. Scholars argue that commercial surrogacy could commodify women's reproductive capacities, particularly in socio-economic contexts where financial need may pressure women into becoming surrogates. In Indonesia and Pakistan, economic disparities raise ethical concerns about coercion and exploitation in surrogacy arrangements.

Unlike Sunni-majority countries, Iran has established a legal framework that permits surrogacy under specific conditions, reflecting Shia jurisprudential flexibility in reproductive technologies. Iran's surrogacy law, implemented in the early 2000s, provides a clear legal structure for surrogacy agreements. The law recognizes the rights of intended parents and ensures that the surrogate mother's rights are legally defined.³² This is in stark contrast to Saudi Arabia and Pakistan, where no legal mechanism exists to recognize surrogacy contracts. While Sunni scholars broadly prohibit surrogacy due to concerns about lineage and marital sanctity, Shia scholars in Iran permit surrogacy under controlled conditions, particularly when conducted within a temporary marriage (*mut'ah*). This reflects a broader acceptance of assisted reproductive technologies in Shia Islam, which allows for a more flexible interpretation of reproductive ethics.

Iran's surrogacy law incorporates state-supervised regulatory mechanisms to protect the rights of surrogate mothers and intended parents. Informed consent, ethical oversight, and legal protections are key components of Iran's surrogacy policy, ensuring that all parties involved are safeguarded from exploitation. While Iran has institutionalized surrogacy, Sunni-majority countries continue to resist legalizing the practice, primarily due to concerns over lineage, marital exclusivity, and potential exploitation.

In contrast to Iran's regulatory approach and Saudi Arabia's outright prohibition, Turkey and Malaysia exhibit legal ambiguity regarding surrogacy. The handling of surrogacy cases in these countries reflects a blend of cultural, religious, and legal considerations. Surrogacy is not explicitly regulated in Turkey, leading to legal uncertainty. Although Turkish law does not officially prohibit surrogacy, it lacks a formal legal framework to govern the practice. As a result, many Turkish citizens seek surrogacy services in foreign jurisdictions where surrogacy is legally recognized. Scholars emphasize that ethical considerations must be prioritized, advocating for regulatory frameworks that protect women's rights and ensure informed consent.³³

Similarly, Malaysia does not have comprehensive legal provisions on surrogacy. The National Fatwa Council has issued Islamic rulings that generally prohibit surrogacy, citing concerns about lineage and the sanctity of marriage. However, since no specific laws govern surrogacy, legal ambiguities exist, leading to challenges in defining parental

³² Fatemeh Ghodrati, "A Comparative Study of Surrogacy Rights in Iran and European Countries, a Review Article," *Ethics Medicine and Public Health* 27 (2023): 100880, <https://doi.org/10.1016/j.jemep.2023.100880>

³³ Piersanti et al., "Surrogacy and 'Procreative Tourism'. What Does the Future Hold From the Ethical and Legal Perspectives?"

rights and the status of children born through surrogacy. Scholars and legal experts in Malaysia have called for clearer regulations that align with Islamic ethical principles while ensuring the protection of surrogate mothers and intended parents.³⁴

Western regulatory models offer valuable insights that may help Muslim-majority countries navigate ethical and legal challenges in surrogacy regulation. Countries like Canada and the UK have developed clear and enforceable legal frameworks for surrogacy, ensuring the protection of all parties involved. Muslim-majority countries could benefit from adopting similar structured approaches that define the legal rights of parents and surrogates. Western models incorporate ethical review boards to evaluate surrogacy arrangements, ensuring that they adhere to moral and ethical standards. Implementing similar oversight mechanisms could address ethical concerns in Islamic contexts.

Western regulatory models emphasize the well-being of surrogate mothers and children, ensuring fair compensation and legal protection. Adapting these principles could help prevent exploitation and promote ethically responsible surrogacy frameworks in Turkey and Malaysia. Many Western countries engage in educational initiatives to inform the public about surrogacy's ethical and legal implications. Increased public awareness in Muslim-majority countries could encourage informed discourse on surrogacy and its alignment with Islamic ethics.³⁵

Table 2. Comparison of Surrogacy Legal Analysis in Muslim-Majority Countries

Country	Legal Status of Surrogacy	Islamic of Jurisprudential Basis	Ethical Concerns	Regulatory Oversight
Saudi Arabia	Prohibited	Sunni scholars prohibit surrogacy due to concerns over lineage (<i>nasab</i>) and third-party reproductive involvement	Concerns about lineage ambiguity, marital sanctity, and commodification of childbirth	No legal framework; enforcement is based on fatwas and Sharia law
Indonesia	Prohibited	Islamic authorities reject surrogacy as it disrupts lineage and contradicts fatwas	Concerns over exploitation of surrogate mothers, particularly those	No clear legal framework, but strong religious

³⁴ Katiman et al., "Exploring End-of-Life Issues and Determination of the Surrogacy Ladder in Malaysia"; Shiraishi et al., "The Scenario of Adoption and Foster Care in Relation to the Reproductive Medicine Practice in Asia."

³⁵ Piersanti et al., "Surrogacy and 'Procreative Tourism'. What Does the Future Hold From the Ethical and Legal Perspectives?"; Andrea Cioffi, Camilla Cecanneccchia, and Fernanda Cioffi, "Surrogacy, Parenthood, and the Rights of the Unborn Child: A Complex Balancing Act and the Need for an International Regulation," *Ethics Medicine and Public Health* 28 (2023): 100897, <https://doi.org/10.1016/j.jemep.2023.100897>; Frati et al., "Bioethical Issues and Legal Frameworks of Surrogacy: A Global Perspective About the Right to Health and Dignity."

Country	Legal Status of Surrogacy	Islamic of Jurisprudential Basis	Ethical Concerns	Regulatory Oversight
		issued by the Indonesian Ulema Council	from lower-income backgrounds	influence restricts surrogacy
Pakistan	Prohibited	Similar to Saudi Arabia and Indonesia, surrogacy is seen as a violation of Islamic principles of family and lineage	Risks of economic coercion of women and potential for child trafficking	No legal recognition; religious rulings enforce prohibition
Iran	Permitted under regulation	Shia scholars allow surrogacy under controlled conditions, often within a <i>mut'ah</i> (<i>temporary marriage</i>) contract	Ethical safeguards exist, with protections against exploitation and ensured fair compensation	Legal framework ensures informed consent, contract enforcement, and rights protection
Turkey	Legally ambiguous	No explicit prohibition, but religious authorities disapprove based on ethical and familial concerns	Ethical concerns over lack of regulation and potential harm to surrogate mothers	No formal laws; individuals seek surrogacy abroad
Malaysia	Legally ambiguous	<i>Fatwas</i> prohibit surrogacy, but no legal restrictions are in place	Lack of clarity over legal parentage, increasing legal uncertainties for children born via surrogacy	No formal legal structure; reliance on religious rulings
Western Countries (UK, Canada)	Permitted under strict regulations	Secular legal frameworks prioritize the rights of all parties while ensuring ethical protections	Potential commercial exploitation, but oversight minimizes risks	Comprehensive legal oversight, ethical review boards, and public awareness campaigns

The comparative analysis reveals a clear divide between Sunni-majority countries, which strictly prohibit surrogacy, and Shia-majority Iran, which permits surrogacy under

a regulated framework. Countries like Turkey and Malaysia navigate legal ambiguity, where religious rulings influence but do not formally define legal policy. Meanwhile, Western countries provide structured legal protections, ensuring transparency and ethical oversight.

To address the legal inconsistencies in Muslim-majority countries, a harmonized legal framework is needed that integrates Islamic ethical principles with contemporary reproductive regulations. This framework should include: 1) Ethical oversight boards to monitor surrogacy practices; 2) Informed consent procedures for all parties involved; and 3) Legal recognition of children born via surrogacy. Such a balanced approach would allow Muslim-majority countries to preserve religious values while adapting to modern medical advancements. Greater collaboration between Sunni and Shia scholars could facilitate a unified Islamic stance on surrogacy, promoting a fair and legally coherent approach to assisted reproduction.

From Prohibition to Regulation: The Evolution of Surrogacy Laws in Islamic Jurisdictions

Islamic jurisprudence has historically demonstrated an ability to adapt to medical advancements through the application of *ijtihād* (*independent reasoning*) and *maqāṣid al-sharīʿa* (*higher objectives of Islamic law*). These methodologies have allowed scholars to reassess traditional legal rulings in response to contemporary challenges, particularly in reproductive health. The issue of surrogacy presents a unique test for Islamic law, as it raises questions regarding lineage (*nasab*), parental rights, and the ethical implications of assisted reproductive technologies. The divergence in perspectives between Sunni and Shia scholars on surrogacy, the ethical considerations surrounding its practice, and the potential for harmonizing these perspectives through legal and ethical frameworks are central themes in the discourse on surrogacy within an Islamic legal context.

Islamic scholars, including both Sunni and Shia jurists, have employed *ijtihād* (independent legal reasoning) to evaluate emerging medical technologies such as in vitro fertilization (IVF) and genetic engineering in light of Islamic ethical principles. While interpretations vary across sects and legal schools, a significant number of scholars from both traditions have accepted IVF when conducted within the boundaries of a lawful marriage, demonstrating a degree of legal adaptability. This acceptance reflects a shared commitment to core objectives of Islamic law, particularly the preservation of lineage (*ḥifẓ al-nasl*) and family integrity. These rulings are grounded in the framework of *maqāṣid al-sharīʿa* (the higher objectives of Islamic law), which prioritize the welfare of the family and the continuation of progeny, provided that such technologies do not involve third-party donors or compromise Islamic moral values.³⁶

³⁶ Amalia and Sudistina, “Examining Ushul Fiqh Principles on the Surrogacy-Based In Vitro Fertilization Program”; Aslati et al., “Utilizing Science and Maqāṣid Al-Sharīʿah in Resolving Contemporary Issues of Islamic Family Law,” *Al-Manahij Jurnal Kajian Hukum Islam*, 2024, 17–36, <https://doi.org/10.24090/mnh.v18i1.10571>; Gamal Eldin Attia, *Towards Realization of the Higher Intentions of Islamic Law: Maqashid al-Syariah – A Functional Approach* (London: International Institute of Islamic

The legal discourse surrounding surrogacy, however, remains more contentious due to its implications for third-party reproductive involvement, which challenges traditional understandings of *nasab*. While Sunni scholars predominantly view surrogacy as impermissible due to the disruption of lineage, Shia scholars in Iran have developed a more flexible legal framework that allows for surrogacy under specific conditions, particularly when it aligns with the principles of temporary marriage (*mut'ah*) to secure legal lineage.³⁷ The application of *maqāṣid al-sharī'a* in evaluating surrogacy suggests that Islamic law can incorporate modern reproductive technologies, provided that ethical concerns and religious principles are safeguarded.

The legal divergence between Sunni and Shia scholars on surrogacy presents an opportunity for jurisprudential dialogue and reconciliation. Several approaches could foster a more cohesive Islamic legal stance on surrogacy: 1) Interfaith Dialogue and Scholarly Collaboration: Encouraging ongoing discussions between Sunni and Shia scholars can facilitate the exchange of perspectives and foster consensus on ethical and legal principles governing surrogacy.³⁸ Collaborative efforts can lead to the development of joint *fatwas* that reflect common ethical values, such as the prioritization of child welfare and family integrity. 2) Emphasis on *Maqāṣid al-sharī'a*: To foster a coherent legal consensus on surrogacy within Islamic jurisprudence, scholars should emphasize a *maqāṣid al-sharī'a* framework, particularly as articulated by Gamal Eldin Attia. Attia advocates for a functional approach to *maqāṣid*, integrating contemporary realities and ethical imperatives into Islamic legal reasoning. He expands the traditional objectives—such as the preservation of lineage (*ḥifẓ al-nasl*)—to encompass broader aims like justice (*'adl*), compassion (*rahma*), and the prevention of harm (*dar' al-mafāsīd*). This perspective allows for a more nuanced understanding of surrogacy, balancing the need to protect familial structures with the imperative to alleviate human suffering and uphold dignity. By adopting Attia's *maqāṣid*-based methodology, Islamic legal discourse can more effectively address the complexities of modern reproductive technologies, ensuring that rulings are both ethically sound and contextually relevant.³⁹ By focusing on overarching ethical goals, a framework can be developed that is both religiously sound and ethically justifiable. 3) Legal and Ethical Guidelines: Establishing comprehensive surrogacy regulations that align with both Sunni and Shia perspectives can bridge the existing divide. These regulations should include requirements for informed consent, protections for surrogate mothers, and legal recognition of children born through surrogacy. 4) Comparative Case Law Analysis: Studying how Muslim-majority countries

Thought, 2007); Ahmad Al-Raysuni, *Imam Al-Syatibi's Theory of the Higher Objectives and Intents of Islamic Law* (London: International Institute of Islamic Thought, 2005).

³⁷ Ghodrati, "A Comparative Study of Surrogacy Rights in Iran and European Countries, a Review Article."

³⁸ Harrison, "Who Is Your Mother? Who Is Your Father?: Assisted Reproductive Technologies in the Light of Sunni and Shi'a Law."

³⁹ Gamal Eldin Attia, *Towards Realization of the Higher Intents of Islamic Law: Maqashid al-Syariah – A Functional Approach* (London: International Institute of Islamic Thought, 2007); Aslati et al., "Utilizing Science and Maqāṣid Al-Sharī'ah in Resolving Contemporary Issues of Islamic Family Law," *Al-Manahij Jurnal Kajian Hukum Islam*, 2024, 17–36, <https://doi.org/10.24090/mnh.v18i1.10571>.

with differing legal systems have approached surrogacy can provide valuable insights for harmonization. Iran's structured regulatory model, for instance, offers a precedent for integrating Islamic ethical considerations with contemporary medical practices.⁴⁰

To regulate surrogacy effectively within an Islamic legal framework, bioethical guidelines must be established that uphold Islamic values while addressing contemporary reproductive challenges. Several key principles should be incorporated into these guidelines: 1) Informed Consent: All parties involved in surrogacy arrangements must provide explicit and informed consent. This includes comprehensive counseling on the medical, legal, and emotional aspects of surrogacy. 2) Protection Against Exploitation: Given concerns about the commodification of childbirth, regulations should ensure that surrogate mothers are not subjected to financial coercion. Measures such as ethical oversight committees and fair compensation standards can help safeguard surrogate rights. 3) Preservation of Lineage (*Nasab*): Any legal framework for surrogacy must prioritize the clarity of lineage. This could be achieved by restricting surrogacy to cases where the genetic material originates exclusively from the intended parents, maintaining traditional familial ties. 4) Ethical Review Boards: The establishment of Islamic bioethics committees to review surrogacy cases can ensure that each arrangement aligns with Islamic teachings and *maqāṣid al-sharī'a*.

Developing legal frameworks that harmonize Islamic legal principles with human rights considerations requires a multi-faceted approach: 1) Engagement with Islamic Scholars: Policymakers should actively collaborate with Islamic jurists from different traditions to create a consensus-based legal approach that respects religious doctrines while addressing modern reproductive challenges. 2) Integration of Human Rights Standards: Legal frameworks should align with international human rights laws, particularly those related to women's rights and children's rights. This ensures that the dignity and autonomy of surrogate mothers and the welfare of children are safeguarded. 3) Public Awareness and Education: Raising awareness about the ethical and legal dimensions of surrogacy through public education campaigns can foster a more informed discussion within Islamic communities. 4) Monitoring and Evaluation Mechanisms: Implementing legal oversight mechanisms can help ensure compliance with ethical standards and prevent potential abuses in surrogacy arrangements. 5) Flexibility and Adaptability: As reproductive technologies evolve, Islamic legal frameworks must remain flexible enough to accommodate new medical advancements while preserving Islamic ethical principles.

Conclusion

This study highlights the diverse interpretations of Islamic jurisprudence on surrogacy, emphasizing the significant differences between Sunni and Shia perspectives. The findings indicate that Sunni-majority countries predominantly prohibit surrogacy due to concerns over lineage integrity (*nasab*), third-party reproductive involvement, and

⁴⁰ Ghodrati, "A Comparative Study of Surrogacy Rights in Iran and European Countries, a Review Article."

ethical dilemmas related to exploitation. In contrast, Shia-majority Iran has established a legal framework that permits surrogacy under regulated conditions, reflecting a more flexible approach to assisted reproductive technologies. The study also demonstrates the role of *ijtihād* (*independent reasoning*) and *maqāṣid al-sharīʿa* (*higher objectives of Islamic law*) in shaping contemporary Islamic rulings, illustrating how Islamic law adapts to evolving medical advancements. A key implication of this research is the necessity for clear and ethically robust surrogacy regulations in Islamic legal systems. While prohibitive models safeguard traditional Islamic values, they may also restrict reproductive options for infertile couples. Conversely, regulated frameworks, such as Iran's, provide alternative solutions while ensuring legal oversight and ethical protections. This study suggests that fostering greater scholarly dialogue and jurisprudential collaboration between Sunni and Shia scholars could lead to more cohesive and ethically sound Islamic rulings on surrogacy. The study contributes to Islamic bioethics and reproductive law by offering an in-depth analysis of Islamic legal adaptations to surrogacy. It underscores the importance of ongoing interdisciplinary engagement among Islamic scholars, legal experts, and medical professionals to ensure that Islamic jurisprudence remains responsive to contemporary reproductive technologies. Future research should investigate cross-cultural perspectives on surrogacy, legal harmonization across Muslim-majority nations, and the socio-economic implications of surrogacy regulation in Islamic contexts.

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